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7 Countrywide Home Loans, Inc. (d/b/a
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8 Loans Servicing, LP (f/k/a Countrywide
Home Loans Servicing L.P.), ReconTrust
9 Co., N.A., Bank of America, N.A., and
Bank of New York Mellon f/k/a The
10 Bank of New York as Trustee

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 PETRA MARTINEZ,

15 Plaintiff,

16 v.

17 AMERICA'S WHOLESALE LENDER, *et al.*,

18 Defendants.

Case No.: 09-cv-05630-WHA

**RESPONSE TO DECLARATION
PURSUANT TO RULE 56(f)**

Date: March 4, 2010
Time: 8:00 a.m.
Courtroom: 9, 19th Floor
Judge: Hon. William H. Alsup

1 In support of their motion for summary judgment (“Motion”), defendants Countrywide
2 Home Loans, Inc. (d/b/a America’s Wholesale Lender), BAC Home Loans Servicing, LP (f/k/a
3 Countrywide Home Loans Servicing L.P.), ReconTrust Company, N.A., Bank of America, N.A.,
4 and Bank of New York Mellon f/k/a The Bank of New York as Trustee (“Defendants”) hereby
5 respond to Michael Patrick Rooney, Esq.’s Declaration Pursuant to FRCP 56(f) (“Declaration” or
6 “Decl.”) on behalf of plaintiff Petra Martinez (“Plaintiff”).

7 Under Ninth Circuit law, a party seeking a continuance under Federal Rule 56(f) has a
8 three-fold burden. First, she “must make clear what information is sought and how it would
9 preclude summary judgment.” *Garrett v. City and County of San Francisco*, 818 F.2d 1515, 1518
10 (9th Cir.1987). Second, she must explain why she “cannot immediately provide ‘specific facts’
11 demonstrating a genuine issue of material fact.” *Mackey v. Pioneer Nat. Bank*, 867 F.2d 520, 524
12 (9th Cir. 1989). Third, she must put the foregoing explanations into an affidavit. Fed.R.Civ.P.
13 56(f); *Brae Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1439, 1443 (9th Cir.1986).

14 Mr. Rooney’s Declaration fails to satisfy all three of these requirements.

15 First, the Declaration does not “make clear what information is sought and how it would
16 preclude summary judgment.” *Garrett*, 818 F.2d at 1518. Mr. Rooney believes that there “are
17 factual inaccuracies” in the evidence offered by Defendants, “including but not limited to mystery
18 surrounding the dates on the documents purportedly signed by my client, the roles of the various
19 defendant parties, and the authentication of exhibits.”

20 The problem for Mr. Rooney, however, is that merely describing broad categories is not
21 enough to satisfy Rule 56(f). Under the rule, “simply identif[ying] the various topics of which he
22 would like to inquire of [defendant] and others, without tying those inquiries to the issues
23 presented by [the] motion” is insufficient. *Yasin v. Coulter*, 2009 WL 2915125, at *6 (E.D. Cal.
24 Sept. 9, 2009). Rather, Mr. Rooney is required to “set forth what *specific* facts plaintiff expects to
25 obtain that will defeat [the] motion for summary judgment.” (*Id.* (emphasis in original.) Mr.
26 Rooney contends that “[d]elivery of the mortgage note to the alleged Party in interest has become
27 an issue under the PSA. I need to conduct discovery on the specific facts surrounding this.”
28

(Decl. at 2.) But, again, merely saying in a declaration that Plaintiff needs specific facts does not satisfy her burden of identifying the specific facts she intends to seek.

Second, even if the Declaration's broad descriptions were adequate substitutes for "specific facts" (they are not), it does not show why Plaintiff "cannot immediately provide 'specific facts' demonstrating a genuine issue of material fact." *Mackey*, 867 F.2d at 524. Indeed, there is no discussion whatsoever as to why Plaintiff is unable to provide facts sufficient to properly oppose a motion for summary judgment.

At most, Mr. Rooney claims that he "need[s] to depose the defendants [*sic*] purported witnesses to question their knowledge, bias, credibility and even the existence and authenticity of the documents they claim to have reviewed." (Decl. at 2.) But "merely testing [a party's] sworn statements through a deposition in hope that he might change his declaration is not a basis for granting a Rule 56(f) request." *Yasin*, 2009 WL 2915125, at *6 (denying Rule 56(f) request where "plaintiff appears to want to test the credibility of Coulter's declaration filed in support of the motion").

Third, since Mr. Rooney has neither identified specific facts, nor explained why Plaintiff is unable to provide facts to create a genuine issue, it is obviously impossible for him to put those explanations into his Declaration. Fed. R. Civ. P. 56(f); *Brae Transp.*, 790 F.2d at 1443.

Because the Declaration does not satisfy Rule 56(f)'s requirements, the Rule 56(f) request should be denied.

DATED: February 18, 2010

Respectfully submitted,

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By: /s/ Kalama M. Lui-Kwan
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